

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Plaintiff,) NO. CV-09-0275-LRS
) ORDER RE ATTORNEY FEES' AND
) COSTS
)
CIAL SERVICE,)
)
)
Defendant.)
)

THIS MATTER comes before the Court on the parties' joint motion for the determination of attorney fees and costs. On February 2, 2010, pursuant to the Court's Order Re: Pending Motions (Ct. Rec. 35), the court ordered the parties to file a joint motion based on their inability to settle the dispute over attorney fees under the accepted offer of judgment of October 21, 2009. The parties have submitted briefs in support of their respective positions on this matter. Plaintiff is represented by Jon N. Robbins. Defendant is represented by Jeffrey I. Hasson.

I. Reasonable Attorneys' Fees

Plaintiff requests \$2,450 in attorney fees for a settled dispute that she recovered \$1,001 under the an accepted offer of judgment on November 21, 2009 pursuant to Federal Rules of Civil Procedure Rule 68. Defendant has objected to the amount of attorney fees requested by Plaintiff as unreasonable and

1 excessive. Defendant submitted a declaration of Barbara Hoerner
2 (Ct. Rec. 39) in support of its position re: determination of
3 attorney fees. Ms. Hoerner, who indicates she is familiar with
4 rates typically requested in these types of cases, states that the
5 hourly rates of \$175 per hour for Mr. Robbins and \$80 per hour for
6 the paralegals are reasonable rates. Ms. Hoerner further states
7 that the rates of \$250 per hour for attorney Robbins or \$120 per
8 hour for paralegals would be outside the general range awarded on
9 a case of this type. Fees incurred by the defendant and hourly
10 rate charged have not been disclosed.

11 The Court has an independent duty to assess the
12 reasonableness of any award of fees. Once the Court has
13 established that fees should be awarded, a single standard governs
14 how the Court arrives at a reasonable fee award. *Blum v. Stenson*,
15 465 U.S. 886, 893, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984) (holding
16 that the amount of fees awarded in a civil rights case is
17 "governed by the same standards which prevail in other types of
18 equally complex Federal litigation"). The initial determination
19 of a reasonable amount of attorneys' fees is the "number of hours
20 reasonably expended on the litigation multiplied by a reasonable
21 hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct.
22 1933, 76 L.Ed.2d 40 (1983). The party seeking fees should submit
23 evidence supporting the hours worked and rates claimed. Where the
24 documentation of hours is inadequate, the district court may
25 reduce the award accordingly. After the reasonable number of
26 hours expended is established, the Court must determine a
27 "reasonable hourly rate considering the experience, skill, and
28 reputation of the attorney requesting fees." *Chalmers*, 796 F.2d

1 at 1210. The "lodestar" amount, the reasonable hours multiplied
 2 by the reasonable hourly rate, is only a "starting point,"
 3 however. *Hensley*, 461 at 433; *Benton v. Oregon Student Assistance*
 4 *Comm'n*, 421 F.3d 901, 904 (9th Cir. 2005). In *Kerr v. Screen*
 5 *Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1976), the Ninth
 6 Circuit adopted the twelve-factor test found in *Johnson v. Georgia*
 7 *Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), to guide
 8 determining both the number of hours reasonably spent and a
 9 reasonable hourly rate. *Chalmers*, 796 F.2d at 1211. The twelve
 10 factors are as follows:

11 (1) the time and labor required, (2) the
 12 novelty and difficulty of the questions
 13 involved, (3) the skill requisite to perform
 14 the legal service properly, (4) the preclusion
 15 of other employment by the attorney due to
 16 acceptance of the case, (5) the customary fee,
 17 (6) whether the fee is fixed or contingent,
 18 (7) time limitations imposed by the client or
 the circumstances, (8) the amount involved and
 the results obtained, (9) the experience,
 reputation, and ability of the attorneys, (10)
 the 'undesirability' of the case, (11) the
 nature and length of the professional
 relationship with the client, and (12) awards
 in similar cases.

19 *Kerr*, 526 F.2d at 70.

20 Not all Kerr factors must be separately analyzed, as long as
 21 the Court discusses the factors most germane to the particular
 22 case and explains how it reached the fee awarded. *Quesada v.*
 23 *Thomason*, 850 F.2d 537, 539 (9th Cir. 1988) (citing *Kesslerv.*
 24 *Associates Fin. Servs. Co. of Hawaii, Inc.*, 639 F.2d 498, 500 (9th
 25 Cir. 1981)). The Kerr factors may also justify increasing or
 26 decreasing the "lodestar" amount. *Benton*, 421 F.3d at 904.
 27 However, in *Hensley*, the Court noted that most of these factors
 28 are "subsumed within the initial calculation of reasonable hours

1 expended at a reasonable hourly rate, rather than the subsequent
 2 determination of whether to adjust the fee upward or downward."
 3 Chalmers, 796 F.2d at 1212 (citing Hensley, 461 U.S. at 434 n. 9).
 4 Thus, because the initial lodestar amount is presumptively
 5 reasonable, Blum, 465 U.S. at 897, particular justification is
 6 required where the Court finds "exceptional circumstance[s]"
 7 warranting adjustment of the lodestar either up or down, Quesada,
 8 850 F.2d at 539.

9 **II. Hours Reasonably Expended/Reasonable Hourly Rate**

10 Plaintiff has requested compensation for a total of 21.2
 11 hours of attorney time ranging from \$175/hour to \$265.00/hour.
 12 (Ct. Rec. 41). The allegations in this case were direct and did
 13 not involve novel or difficult legal issues.

14 A reasonable attorney fee is the number of hours and the
 15 hourly rate that would be billed by "reasonably competent
 16 counsel." Venegas v. Mitchell, 495 U.S. 82, 86, 110 S.Ct. 1679,
 17 109 L.Ed.2d 74 (1990); Blanchard v. Bergeron, 489 U.S. 87, 109
 18 S.Ct. 939, 103 L.Ed.2d 67 (1989). The Court finds that attorney
 19 fees of **\$1,050**, based on the statement of services found in Ct.
 20 Rec. 41-8, are reasonable based in local legal community as a
 21 whole.

22 Although counsel have focused on the hourly rate which should
 23 be used in formulating a fair fee—the Court notes that this
 24 factor, by itself, does not provide an accurate foolproof method
 25 of determining a fair fee. Issues inherent in the current debate
 26 include the question of whether all hours spent on the fee debate
 27 should be counted, particularly if a significant portion of the
 28 time spent occurred after Plaintiff received a fair offer; and

1 whether the hours utilized to obtain a favorable result for
2 Plaintiff are reasonable or accurate. On the other hand, the
3 defendant's duty to pay should not be strictly limited to
4 Plaintiff's contracted for arrangement with her counsel.

5 Given these circumstances and the lack of precision in the
6 data available to the Court, the undersigned judicial officer
7 declines to adopt a specific hourly rate. Likewise, the Court
8 cannot make an accurate determination of the precise number of
9 hours which should be considered. Accordingly, the figures
10 arrived at herein are based on the totality of the circumstances
11 and the actual result obtained in bringing this matter to a close.

12 **III. Costs**

13 Defendant has not objected to any particular costs requested
14 by Plaintiff. The costs are for a \$350.00 filing fee and a
15 process server fee of \$65.00, for a total of **\$415.00**.

16 **IV. Conclusion**

17 Having reviewed all papers filed in support of the motion, as
18 well as all papers filed in opposition to the motion, and for the
19 reasons explained above, **IT IS HEREBY ORDERED:**

20 1. Plaintiff's Motion for Attorney Fees, **Ct. Rec. 41**, is
21 **GRANTED IN PART AND DENIED IN PART**. The parties Joint Motion for
22 Attorney Fees, **Ct. Rec. 36**, is **GRANTED IN PART AND DENIED IN PART**.

23 2. Plaintiff is entitled to reasonable attorneys' fees in
24 the amount of **\$1050.00**.

25 3. Plaintiff is entitled to costs in the amount of **\$415.00**.

26 4. An order directing the clerk to enter judgment based on
27 this order will be entered separately hereafter.

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IT IS SO ORDERED. The District Court Executive is directed to enter this order and to provide copies to counsel.

DATED this 8th day of March, 2010.

s/Lonny R. Suko

LONNY R. SUKO
Chief U.S. District Court Judge